Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at http://about.jstor.org/participate-jstor/individuals/early-journal-content.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

As one reads the decisions rendered by the Supreme Court of China during the brief period of seven years one marvels that such a change from the old régime should have been possible. With one bound, as it were, China has cut loose from the past and placed herself juridically on a footing of equality with the most civilized countries of our day. Those who had some familiarity with the provisions of the draft of the Chinese Civil Code knew the lofty spirit in which that great work was conceived, but were not without misgivings concerning the ability of the Chinese judiciary to give practical effect to a foreign system of law. The decisions of the Supreme Court just published go a long way, however, in reassuring us in that regard. Apparently the Chinese mind as a result of long centuries of civilization and philosophic study has acquired a nimbleness which enables its judges to apply with mastery the rules of the new *jus gentium.* May we not hope, however, that the legal structure to be erected will not be based exclusively upon the principles of continental law, but that it will appropriate also the good qualities of the Anglo-American legal system? May China be far-sighted enough to send more of her youth to study law in England and the United States, so that they may become acquainted with the spirit of Anglo-American law. If our young sister republic should succeed in blending the two great legal systems of the world—the Roman-continental and the Anglo-American—it would make a contribution to civilization, the effect of which can hardly be over-estimated. For the present we are content to know that its Supreme Court has already made a splendid beginning in the establishment of a new legal order.

E. G. L.

SPECIFIC CRIMINAL INTENT IN STATUTORY ASSAULTS

As is well known, all assaults at common law were misdemeanors, and the fact that the assault was accompanied by an intent to commit a particular felony did not change the grade of the offense, although such aggravating circumstance might properly increase the severity of the punishment imposed upon the misdemeanant.[1] By statute, however, both in England and in the United States, the particular criminal intent actuating the assailant frequently causes his offense to be distinct from an assault delivered by one acting with a different intent. Thus in Connecticut, for example, assault with intent to murder, assault with intent to rob, striking with intent to maim or disfigure, and assault with a dangerous weapon, are treated as distinct offenses for which distinct punishments are prescribed.[2] Where a specific criminal intent is made

[1] 2 Wharton, *Criminal Law* (11th ed.) sec. 838; 2 Bishop, *New Criminal Law* (8th ed. 1892) secs. 42, 55; *Commonwealth v. Bigelow* (1808) 4 Mass. 438; *Stout v. Commonwealth* (1824, Pa.) 11 Serg. & R. 177; *Simpson v. State* (1877) 59 Ala. 1, 9.

[2] Conn. Rev. St. 1918, secs. 6193, 6199, 6194, 6344. This is only a partial list of

an element of the statutory offense, the necessity of alleging such intent in the indictment and of proving it upon the trial seems obvious and is in general admitted without dispute.[3]

Questions of difficulty, however, sometimes arise when the victim of the assault is not the person whom the assailant really desired to injure. This may happen either through a mistake of identity, as where A, desiring to kill or maim B, mistakes C for B and under this misapprehension assaults C, or through accident, as where A shoots at B, but by mistake of aim misses B and hits C. The distinction between mistake of identity and mistake of aim has not always been observed in the decided cases. To show its importance is the purpose of this discussion.

The problem involved in mistaken identity was recently presented to the Supreme Court of Connecticut in *State v. Costa* (1920, Conn.) 110 Atl. 875. The information charged the defendant with assaulting C with a razor, with intent to maim and disfigure him, contrary to the statute.[4] Evidence was offerred tending to prove that the defendant had previously quarrelled with one W, that he mistook C for W, and, acting under that misapprehension, came up behind C and slashed his cheek with a razor. The defendant's counsel objected that evidence of a purpose to maim W did not tend to prove the charge of assault with intent to disfigure C. The court answered this contention convincingly, saying in effect, that although the attack was made under a mistake as to the identity of the victim, the defendant intentionally directed his assault at C with intent to disfigure *him,* and thus his act fell squarely within the statutory prohibition.[5] This analysis, it is submitted, is correct. In cases of mistaken identity there is no need of invoking the doctrine of "transferred intent," as is sometimes done.[6] The very person assaulted is the person intended to be maimed or killed,

---

statutory assaults. It should be noted that in such statutes the term "assault" is frequently used to include a battery as well as a technical assault.

[3] 2 Wharton, *op. cit.* note 1, sec. 839.

[4] Conn. Rev. St. 1918, sec. 6194: "Every person who shall put out an eye, slit an ear, nose, lip, or any other part of the head, face, or neck of another, or cut or bite off or disable any member of another, with intent to maim or disfigure him . . . shall be imprisoned not more than ten years."

[5] Mr. Justice Case's words were as follows (p. 877): "The information accurately presented a charge which the evidence tended directly to substantiate. It in no sense negatived or qualified the immediate purpose and legal intent of Clark's assailant to assault Clark that the act may have rested wholly upon a mistaken belief as to Clark's identity. The purpose of the assailant was to accomplish the end immediately in view, and the actual victim was no less the intended direct physical object of the attack because at the time he may have been taken for someone else."

[6] For example, in *People v. Wells* (1904) 145 Cal. 138, 140, 78 Pac. 470, 471, Van Dyke, J. says: "But where one intends to assault or kill a certain person, and by mistake or inadvertence, assaults or kills another in his stead, it is nevertheless a crime, and the intent is transferred from the party who was intended to the other." See also 1 Wharton, *op. cit.* note 1, at p. 184, note 3.

for the defendant desires his blow to take effect upon the particular person before him, although such desire is based upon a mistake of fact, i. e., as to the identity of his victim. Such a mistake of fact is, of course, immaterial and furnishes no excuse.[7]

But if the case involves an accidental blow from mistaken aim, rather than an intended blow from mistaken identity, different considerations are involved. Suppose, for example, the defendant had struck at W, but his blow had been deflected and had fallen upon and slashed the cheek of C. Could he be convicted of the statutory offense of assaulting C with intent to disfigure him? There are cases which imply an affirmative answer,[8] but it is believed that they are the result of inadequate analysis. In such a case the consequences of the defendant's act are clearly not such as he in fact intended. With respect to C, his act was accidental, for his intent was to have it produce consequences upon W. Now it is true that a person is sometimes held answerable, even in criminal law, for the unintended consequences of his acts. If an unlawful blow intended to kill W accidentally falls upon and kills C, there is no doubt that the actor will be guilty of the murder or the manslaughter of C.[9] In such a case the general criminal intent to strike one is "transferred from the party who was intended" to the actual victim and gives criminal color to the unintended result of causing the latter's death. This is because the criminal state of mind, which coupled with the act causing death, constitutes murder or manslaughter, need not be a specific intent to kill the person whose death is caused.[10] "Malice" as used in the definition of murder is a technical term and means no more than "a heart regardless of social duty, and fatally bent on mischief."[11] This criminal state of mind exists in the defendant when he strikes an unlawful blow, and although the consequences of the blow fall upon an unintended victim, there seems no injustice in punishing him as if he had intended such consequences. But where a statute requires one element of the offense to be a specific intent with respect to the person assaulted, there is no place for such

---

[7] In accord with the principal case, see *Queen v. Lynch* (1846, Cent. Cr. Ct.) 1 Cox C. C. 361; *Regina v. Stopford* (1870, N. P.) 11 Cox C. C. 643; *Regina v. Smith* (1853, Cr. Cas. Res.) Dears. C. C. 559 ("the prisoner . . . meant to murder the man at whom he shot"); *People v. Torres* (1869) 38 Cal. 141; *McGehee v. State* (1885) 62 Miss. 772 ("The evil and specific intent to strike the form before him at the time is manifest.").

[8] See *State v. Gilman* (1879) 69 Me. 163; *Callahan v. State* (1871) 21 Oh. St. 306; *Rex v. Jarvis* (1837, N. P.) 2 Moody & R. 40; *Dunaway v. People* (1884) 110 Ill. 333; cf. *People v. Stoyan* (1917) 280 Ill. 300, 117 N. E. 464.

[9] 1 Wharton *op. cit.* note 1, sec. 441. Wharton notes certain logical difficulties with this doctrine, but recognizes that it is established beyond question. Numerous cases are collected in 90 Am. St. Rep. 582, note.

[10] The rule of pleading should be noted, however, that the indictment must allege the assault to have been made upon the person killed. *State v. Clark* (1898) 147 Mo. 20, 47 S. W. 886.

[11] *Pennsylvania v. Honeyman* (1793, Pa.) Add. 147.

doctrine of "transferred intent." The intent to kill or injure another than the one assaulted is not the intent required by statute. The distinction in this respect between cases of murder and of statutory assaults has been well pointed out.[12]

Of course a statute may be so framed that the wounding of one person coupled with an intent to wound another constitutes the statutory offense.[13] And it would seem the part of wise legislation so to phrase the statutes as to provide for such cases, for clearly the moral guilt of the assailant is as great when his blow accidentally falls upon a third party as when it reaches the intended victim. But usually the statutes are so worded that a conviction for assault with a specific intent against the injured person cannot be sustained where it appears that the assailant's blow was in fact intended for another.[14] A few cases appear to be contrary to this view;[15] but it is believed that the weight of authority as well as the better reasoning sustains the propositions asserted above. It should be noted also that even though the assailant cannot be convicted of the aggravated statutory assault upon the person injured he may be held guilty of a simple assault or battery,[16] for these crimes do not require a specific intent with respect to the injured person.

T. W. S.

---

[12] *State v. Mulhall* (1906) 199 Mo. 202, 218, 97 S. W. 583, 587 and cases therein cited; cf. *State v. Gilman* and *Dunaway v. People, supra* note 8.

[13] 24 & 25 Vict. (1861) c. 100, sec 18: "Whosoever shall unlawfully and maliciously by any means whatever wound . . . any person . . . with intent to maim, disfigure, or disable any person . . . shall be guilty of felony." It is stated in *Regina v. Latimer* (1886, Cr. Cas. Res.) 16 Cox C. C. 70, that this section was in substitution for and correction of the earlier statute of 9 Geo. IV c. 31, under which it was necessary that the intent should be an intent to injure the person actually injured. See *Rex v. Holt* (1836, N. P.) 7 Car. & P. 518. Mo. Rev. St. 1909, sec. 4483 accomplishes the same result.

In *State v. Thomas* (1910) 127 La. 576, 53 So. 868, 37 L. R. A. (N. S.) 172 a statute reading: "Whoever shall shoot any person with a dangerous weapon with intent to commit murder, shall etc." was construed as not requiring the intent to murder to have been directed against the person actually hit. See also *Wareham v. State* (1874) 25 Oh. St. 601. Perhaps *Dunaway v. People, supra* note 8, is also explainable on the ground of statutory construction.

[14] A large number of authorities are collected in *State v. Mulhall, supra* note 12; see also *People v. Stoyan, supra* note 8.

[15] See cases cited in note 8. In *Callahan v. State* (1871) 21 Oh. St. 306, 309, the court says: "Criminal intent may be properly asserted of an injury by malicious shooting . . . where a shot discharged at one injures another who is at the time known to be in such position or proximity that his injury may be reasonably apprehended as a probable consequence of the act; in which case the law does not permit such reckless disregard of, and indifference to, results to pass with impunity, but will hold the intent to have embraced the victim." Perhaps on the ground that injury to the person in fact injured was a probable consequence of shooting at the intended victim, these cases may be distinguished from cases where the injury to the third party is purely accidental.

[16] *Regina v. Latimer* (1886, Cr. Cas. Res.) 16 Cox C. C. 70; *Simpson v. State* (1877) 59 Ala. 1, 9; *Cowley v. State* (1882, Tenn.) 10 Lea., 282.

Common scolds were indictable at common law[1] and when convicted, were properly ducked,[2] but the husband was denied the privilege of suing his louder half.[3] In spite of recent married women's property acts, ostensibly giving a wife her antenuptial legal status,[4] the courts are slow to allow either husband or wife to sue the other for torts.[5] The supreme court of Minnesota has refused to enjoin a wife's nagging. *Drake v. Drake* (1920, Minn.) 177 N. W. 624. He could have sued her for a broken promise, but not for a broken ear drum.[6] And the Weight of Authority sustains the decision.[7] Nag on, Xanthippe.

What do we mean by "permanent," and how long is "forever"? If land is conveyed to a railroad company "in consideration of the permanent location of the depot" thereon, to be used "exclusively for a depot," with a street, "which is forever to remain open," does title revert to the grantor's heirs when the land is no longer used for a depot or a street 65 years later? In *Sheets v. Vandalia Ry.* (1920, Ind. App.) 127 N. E. 609, the court held that it does not. The court first held that the words created a condition and not a covenant; that is, that failure to use the land for a depot and street is a fact that operates as a condition subsequent to the vesting of title in the company and not merely as a breach of a legal duty. The occurrence of this fact, therefore, terminates the title of the grantee. The court then further held that this fact did not occur and that the provisions of the deed were substantially complied with. Thus it seems superficially that 65 years constitutes permanency in the case of a depot and "forever" in the case of a street. It may be admitted, however, that "permanent location of a depot" may mean the *location of a permanent depot* and that a "permanent depot" is any depot building firmly attached to the soil. On this theory a very few months' use of the land for depot purposes might satisfy the provisions of the deed.

---

[1] 4 Blackstone, *Commentaries*, 168.

[2] *Ibid.*

[3] 1 Blackstone, *Commentaries*, 443. But see 8 Hooker, *Lawes of Ecclesiastical Politie* (1676) 2, "The law appointeth no man to be an husband, but if a man hath betaken himself unto that condition, it giveth him then authority over his own wife."

[4] Married Women's Act, Minn. Gen. St. 1913, sec. 7142; (1920) 29 YALE LAW JOURNAL, 454; *Prosser v. Prosser* (1920, S. C.) 102 S. E. 787.

[5] (1918) 27 YALE LAW JOURNAL, 1081; *Heyman v. Heyman* (1917) 19 Ga. App. 634, 92 S. E. 25.

[6] See *Brown v. Brown* (1914) 88 Conn. 42, 46, 89 Atl. 889, 891.

[7] *Dishon's Adm'r. v. Dishon's Adm'r.* (1920, Ky.) 219 S. W. 794, has collection of authorities; *Keister's Adm'r. v. Keister's Ex'rs.* (1918) 123 Va. 157, 96 S. E. 315.